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FISCAL IMPACT STATEMENT

LS 7292
BILL NUMBER: SB 301

NOTE PREPARED: Feb 20, 2009
BILL AMENDED: Feb 19, 2009

SUBJECT: Medicaid Transfer of Assets and Trusts.

FIRST AUTHOR: Sen. Miller
FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X GENERAL
DEDICATED
X FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill specifies that beginning October 1, 2009, the Office of Medicaid Policy and Planning (OMPP), in determining eligibility, may not consider a total of $1,200 per year in contributions by an individual to a family member or nonprofit organization as an improper transfer and may disregard certain contributions.

The bill also specifies that rules adopted by the Office of the Secretary of the Family and Social Services Administration concerning transfer of assets may not: (1) apply to a transfer of property that occurred before the effective date of the rule; and (2) require an individual to return all assets in order to reduce a penalty period for the transfer of assets. The bill states that the OMPP may not apply certain penalties to noninstitutionalized individuals for the disposal of assets.

The bill specifies that, beginning October 1, 2009, a trustee of certain trusts may not distribute trust property except for state and federal taxes to any person entitled to a payment from the trust until the OMPP has been fully reimbursed for rendered assistance.

Effective Date: July 1, 2009.

Explanation of State Expenditures: (Revised) This bill would require FSSA to amend rules regarding Medicaid penalties for the improper transfer of assets to qualify for medical assistance. The bill also specifies that any rules adopted concerning the transfer of property may not apply to a transfer that occurred before the effective date of the rule. Rule-making activities are administrative in nature, and the FSSA should be able to accomplish the required task within its existing level of resources.

Effective October 1, 2009, the bill would limit an individual to $1,200 per year in total contributions to charitable organizations and to family members during the applicable look-back period for determining Medicaid eligibility for nursing facility level of care. Contributions or gifts above the defined $1,200 annually would qualify as improper asset transfers subject to the imposition of a penalty period. The bill allows the OMPP to disregard a contribution made by an individual if the transfer follows a pattern that existed for at least three years before applying for Medicaid or was not for the purpose of fraud. The fiscal impact of this provision would depend on the number of individuals that might qualify for Medicaid benefits sooner as a result of contributions or gifts made to family members or charitable institutions.

The bill prohibits OMPP from implementing an optional provision of the federal Deficit Reduction Act of 2005 to apply penalties to a noninstitutionalized individual or a spouse for the disposal of assets for less than fair market value. The bill specifies that any rules adopted may not apply to the transfer of property or another transaction that occurred before the passage of the rule. It also specifies that the OMPP may not require an individual to return all assets determined to be improperly transferred in order to reduce a penalty period. The Office is required to proportionally reduce the penalty period for the partial return of assets. The fiscal impact of these provisions would depend on the number of individuals that might qualify for Medicaid benefits sooner as a result of the provisions of the bill.

The bill also specifies that After October 1, 2009, with the exception of the payment of state and federal taxes, when qualifying trusts are terminated, no distribution of trust property may be made to any person until the OMPP has been fully reimbursed for assistance rendered to the person for whom the trust was created.

Background Information: State Medicaid programs are required to review the assets of Medicaid applicants for a period of time prior to application for medical assistance. This period is known as the look-back period. A financial review looks for transfers from personal assets made during the look-back period that appear to have been made for the purpose of obtaining Medicaid eligibility. Transfers made before the look-back period are not reviewed. The federal Deficit Reduction Act of 2005 lengthened the required look-back period from 36 months to 60 months for all income and assets disposed of by an individual. The increased look-back period applies to asset transfers that occurred after the date of enactment of the federal legislation; February 8, 2006. If a Medicaid applicant is found to have made an improper transfer of assets during the look-back period, a penalty period of Medicaid ineligibility for nursing home level of care is imposed. OMPP is in the process of promulgating rules to comply with the Deficit Reduction Act.

Explanation of State Revenues:

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: OMPP, FSSA.

Local Agencies Affected:

Information Sources: *Deficit Reduction Act of 2005, Summary of Medicaid/Medicare/Health Provisions*, updated August 6, 2006, National Conference of State Legislatures; Minutes of the Select Joint Commission on Medicaid Oversight, October 22, 2008.

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